

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition Nos.: 03-005-12-1-3-20426-15
03-005-15-1-4-00293-15
Petitioner: Cornerstone Holdings, LLC
Respondent: Bartholomew County Assessor
Parcel No.: 03-95-11-140-000.101-005
Assessment Years: 2012 & 2015

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated its 2012 and 2015 appeals with the Bartholomew County Assessor on January 11, 2012, and August 10, 2015, respectively.
2. On July 13, 2015, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for the 2012 assessment year denying the Petitioner any relief.
3. On October 23, 2015, the PTABOA issued its determination for the 2015 assessment year also denying the Petitioner any relief.
4. The Petitioner timely filed Petitions for Review of Assessment (Form 131s) with the Board for each year, electing the Board's small claims procedures.
5. On May 23, 2018, the Board's designated administrative law judge (ALJ) Patti Kindler held a consolidated hearing. Neither the Board nor the ALJ inspected the property.
6. Certified tax representative Milo Smith appeared for the Petitioner. County Assessor Lew Wilson appeared for the Respondent. Local government representative Virginia Whipple was a witness for the Respondent. All of them were sworn.

Facts

7. In 2012, the property under appeal was a "small shop" with paved parking on a 0.53 acre lot. In 2015, the property was changed to a "medical office" with paved parking and fencing. The property is located at 3571 National Road in Columbus.

8. The PTABOA determined the following values:

Year	Land	Improvements	Total
March 1, 2012	\$67,410	\$158,800	\$226,210
March 1, 2015	\$67,400	\$276,800	\$344,200

9. The Petitioner requested the total assessment for 2012 revert back to the 2011 total of \$182,300 (land \$46,200 and improvements \$136,100).

10. The Petitioner requested the total assessment for 2015 revert back to the 2014 total of \$164,100 (land \$67,400 and improvements \$96,700).

Record

11. The official record for this matter is made up of the following:

- a. A digital recording of the hearing,
- b. Exhibits:

Petitioner Exhibit 1: Email from York Pollert to Mr. Smith and Ms. Whipple dated April 17, 2018,
Petitioner Exhibit 1A: 2011 subject property record card (PRC),
Petitioner Exhibit 2: Nine emails between Jane Chrisman from the Board, Mr. Smith, Ms. Whipple, and Mr. Wilson, dated April 20, 2018, May 2, 2018, May 3, 2018, and May 9, 2018,
Petitioner Exhibit 2A: 2012 subject PRC,
Petitioner Exhibit 3: 2012 Form 131,
Petitioner Exhibit 3A: REAL PROPERTY ASSESSMENT GUIDELINES, Appendix D, "General Commercial Models,"
Petitioner Exhibit 4: 2015 Form 131,
Petitioner Exhibit 4A: Text of Ind. Code § 6-1.1-4-4.4,
Petitioner Exhibit 5: Text of Ind. Code § 6-1.1-15-3,
Petitioner Exhibit 6: Memorandum from Department of Local Government Finance (DLGF) entitled "Legislation Affecting Appeals," dated September 1, 2017,
Petitioner Exhibit 7: 2011 REAL PROPERTY ASSESSMENT MANUAL, page 3,
Petitioner Exhibit "2015":2015 subject PRC.

Respondent's exhibits for 2012 appeal:

Respondent Exhibit A: Respondent's "Request denial of Petitioner's Withdrawal and rescheduling hearing" timeline, Board's hearing notice, fifteen e-mails between Ms. Chrisman, Mr. Pollert, Ms.

Whipple and Mr. Wilson, dated March 28, 2018, April 17, 2018, April 19, 2018, April 20, 2018, and May 2, 2018,
Respondent Exhibit B: 2011 subject PRC,
Respondent Exhibit C: 2012 subject PRC.

Respondent's exhibits for 2015 appeal:

Respondent Exhibit A: Respondent's "Request denial of Petitioner's Withdrawal and rescheduling hearing" timeline, Board's hearing notice, fifteen e-mails between Ms. Chrisman, Mr. Pollert, Ms. Whipple and Mr. Wilson, dated March 28, 2018, April 17, 2018, April 19, 2018, April 20, 2018, and May 2, 2018,
Respondent Exhibit B: 2014 subject PRC,
Respondent Exhibit C: 2015 subject PRC.

- c. The record also includes the following: (1) all pleadings and documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) these findings and conclusions.

Petitioner's Request to Withdraw the Petition and Respondent's Subsequent Objection

12. On April 19, 2018, Mr. Smith, emailed the Board purporting to withdraw the 2012 and 2015 appeals. On April 20, 2018, Mr. Wilson emailed the Board to object to the withdrawal on the grounds that Respondent had "spent too many resources on this appeal." On May 2, 2018, the Board responded in an email advising the parties that they could address this issue at the already scheduled hearing set for May 23, 2018. *Pet'r Ex. 2; Resp't Ex. A.*
13. On May 2, 2018, Ms. Whipple, emailed the Board requesting a continuance. Ms. Whipple stated "because of the initial withdraw our appraiser was denied access to the parcel causing the appraisal was put on hold." On May 3, 2018, Mr. Smith responded to the email stating "I contest the assessor's request to postpone the subject hearing so they have enough time to hire an appraiser to prove their 24% increase in assessed value is correct." Mr. Smith also stated "the appraiser has not issued an appraisal and the DLGF rules don't prohibit the petitioner from withdrawing an appeal." On May 3, 2018, Ms. Whipple again reiterated in an email to the Board the Respondent had spent resources on his vendor and appraiser in preparing for the appeal. She further stated "the assessor will have to pay for that time with nothing to show for it." On May 9, 2018, the Board responded with an email stating "[T]he hearing for the below appeals will be held as scheduled on May 23, 2018, at 2:30 p.m. (and) if the parties would like to address the issue of the withdrawal and objection to the withdrawal, they may do so at the beginning of the hearing." *Pet'r Ex. 2.*
14. At the hearing, Mr. Smith explained he received an email from certified appraiser Mr. Pollert on April 17, 2018, requesting to inspect the property for an appraisal. On April

- 19, 2018, several hours before the appraiser was to inspect the property, Mr. Smith's office manager sent the Board an email withdrawing the appeals. The withdrawal request was made 34 days prior to the scheduled hearing date. *Smith testimony; Pet'r Ex. 1, 2.*
15. Mr. Smith further testified the appeals were filed in 2015 and the hearing was not scheduled until 2018 even though Ind. Code § 6-1.1-15-3 states that the Board "shall conduct a hearing no later than one year after a petition in proper form is filed." Mr. Smith argued that he felt it was "appropriate" to withdraw the appeals 34 days before the hearing date, because the Board "was so far behind in scheduling the hearings." *Smith testimony; Pet'r Ex. 3, 4, 5.*
 16. Mr. Smith also argued the Taxpayer's Notice to Initiate an Appeal (Form 130) states that taxpayers may withdraw in writing an appeal at least 10 days before the PTABOA hearing. Additionally, there is nothing in the Board's "rules" that states a party is prohibited from withdrawing a petition. In fact, the Board "approved" the withdrawals when they were initially emailed.¹ *Smith testimony; Pet'r Ex. 6.*
 17. Finally, Mr. Smith argued an assessor is not required to provide an appraisal to support an assessment according to the 2011 Real Property Assessment Manual. *Smith testimony; Pet'r Ex. 7.*
 18. In response to the various arguments made by the Petitioner, the Respondent countered by explaining "because the subject property sold in 2009 for \$460,000, he found it necessary to get an appraisal, as he felt the property was still grossly under assessed and he had the burden of proof in this case." The Respondent testified he contacted Mr. Pollert on March 28, 2018, to prepare a "phase 1 appraisal" on the subject property. The appraiser then contacted Mr. Smith on April 17, 2018, to inspect the property. No inspection date was scheduled and the appraisal was put on hold because Mr. Smith attempted to withdraw the appeals on April 19, 2018. Ms. Whipple, reiterated the Respondent had incurred "\$2,000 in expenses in vendor costs, work done in Assessor's office and in contracting for the appraisal report." Ms. Whipple also argued that due to the confusion caused by the attempted withdrawal of the appeals, Mr. Pollert would be unable to complete his appraisal until June 8, 2018. Accordingly, the Respondent requested the Board to grant its request for continuance and reschedule the hearing when the appraisal was complete. *Whipple testimony; Wilson testimony; Resp't Ex. A, B, C.*
 19. The ALJ took the issue under advisement.
 20. The Tax Court addressed a similar issue in *Joyce Sportswear Co. v. State Bd. of Tax Comm'rs*, 684 N.E.2d 1189 (Ind. Tax Ct. 1997). In that case, the State Board had denied the taxpayer's motion to withdraw its appeal petition after two hearings had been held and the State Board's hearing officer had notified the taxpayer that she would

¹ Nothing in the record indicates that the Board approved the withdrawal of the Petitioner's 2012 and 2015 appeals prior to the May 23, 2018, hearing date.

recommend increasing the assessment. *Joyce Sportswear*, 684 N.E.2d at 1193. On judicial review, the taxpayer claimed that it had a right to withdraw its petition grounded in Rule 41(A) of the Indiana Rules of Trial Procedure and the common law procedural device of retraxit. *Id.*

21. The Tax Court disagreed. While Trial Rule 41 (A)(1)(a) allowed a plaintiff to dismiss a claim without order of the court if it filed a notice of dismissal at any time before an adverse party filed an answer or motion for summary judgment, the State Board's procedural rules did not require responsive pleadings. The Court therefore looked to decisions such as *Rose v. Rose*, 526 N.E.2d 231 (Ind. Ct. App. 1988) in which the plaintiffs sought to dismiss actions as of right where no responsive pleading had been filed but where the cases had proceeded to an advanced stage. In those decisions, the courts explained that Trial Rule 41 (A) was meant to "eliminate the evils resulting from the absolute right of a plaintiff to take a voluntary nonsuit at any stage of the proceedings before the pronouncement of judgment and after the defendant had incurred *substantial expense* or acquired substantial rights." *Joyce Sportswear*, 684 N.E.2d at 1193 (*quoting Rose*, 526 N.E.2d at 235) (emphasis added). Those courts similarly found dismissal as of right inappropriate where the "adverse party [would] 'suffer some legal prejudice other than the mere filing of a second lawsuit.'" *Id.* at 1194 (*quoting Rose*, 526 N.E.2d at 234). The Tax Court concluded that denying the taxpayer's purported voluntary withdrawal as of right would be appropriate if the State Board could "demonstrate either substantial expense or legal prejudice." *Id.*
22. Turning to the facts, the Court found that allowing the taxpayer to withdraw its appeal as of right at such an advanced stage would have caused a substantial waste of time and effort. *Id.* at 1193. It would have also legally prejudiced the State Board. While the State Board had plenary authority to reassess property at a higher value while addressing the taxpayer's appeal, the time within which it could raise the assessment outside the appeal process had lapsed. *Id.* at 1194.
23. Similarly, assuming without deciding that retraxit applied to administrative proceedings before the State Board, the Court explained that retraxit is a kind of voluntary dismissal. And in Indiana, "one party's voluntary dismissal of the action did not carry with it the adversary's counterclaim without the adversary's consent." *Id.* at 1195. The Court viewed a counterclaim as a "legal right analogous to the State Board's statutory right to assess the property in this case," and held that retraxit could not be used to prejudice that right. *Id.*
24. Here in the appeals at hand, the Petitioner did not cite to any authority for its claimed right to voluntarily dismiss its appeals. Without a specific request to do so, we will not analyze whether a common law device like retraxit even applies to our administrative proceedings, much less whether it gives the Petitioner the right to voluntarily dismiss its petitions without an order from the Board allowing it to do so. But the Trial Rules may be applied to our proceedings to the extent they do not conflict with our procedural rules or applicable statutes. 52 IAC 2-1.2-1; *see also* 52 IAC 3-1-1 (indicating that our plenary

rules apply to small claims appeals unless they are inconsistent with our small claims procedures). We will therefore analyze the claim under Trial Rule 41 (A).

25. The Petitioner attempted to unilaterally withdraw its appeals after learning the Respondent had hired an appraiser. According to the Respondent, he hired an appraiser but “no inspection date was scheduled and the appraisal was put on hold.” Granted, the appraisal was “put on hold” because Mr. Smith had attempted to withdraw the appeals. Even so, the appraisal was not completed and the Respondent did not incur the substantial expense of a completed appraisal. Because the standard is “substantial expense” rather than mere “expense” the Board finds the Respondent failed to prove a substantial expense was incurred. *See Joyce Sportswear*, 684 N.E.2d at 1193 (*quoting Rose*, 526 N.E.2d at 235). Accordingly, the Board overrules the Respondent’s objection and grants the Petitioner’s withdrawal of its 2012 and 2015 assessment appeals. Additional objections were raised, but the Board’s ruling on the Petitioner’s withdraw request renders those objections moot.

Conclusion

26. The Board grants the Petitioner’s withdraw request for the 2012 and 2015 assessment appeals. Accordingly, the 2012 and 2015 assessments are to remain the same.

Final Determination

In accordance with these findings and conclusions, the Board grants the Petitioner’s withdraw request and orders the 2012 and 2015 assessments to remain the same.

ISSUED: October 22, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.